IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Harish Kumar vs. ADJ (FT) No.2, Pali & anr.

(S.B.CIVIL WRIT PETITION NO.2754/2004)

DATE OF ORDER ::: MARCH 22, 2005

P R E S E N T

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. S.P. Sharma, for the petitioner.

Mr. D.C. Sharma, for the respondent no.2/caveator.

BY THE COURT :

REPORTABLE

Heard learned counsel for the parties.

It appears that the petitioner/defendant submitted an application under Order 13 Rule 3 C.P.C. before the trial court and raised objection about admissibility of the document on the ground that since the original document is in existence and has not been produced by the plaintiff, therefore, no mark of exhibit can be put on the copy of document as the document in question is inadmissible in evidence as the primary evidence is available and further the original document is not executed on proper stamps.

The petitioner's above said application was dismissed by the trial court on the ground that the objection can be decided by the Court subsequently after the evidence and the mark of Exhibit, subject to objection, can be put on document. The trial court took help of amendment in C.P.C. and observed that after the amendment in C.P.C., the evidence can be produced by the parties by way of an affidavit and objection about admissibility of the document can be examined by the court only afterwards.

According to learned counsel for the petitioner, the document in question is a fabricated document and for that purpose, the petitioner has already pleaded before the trial court in his written statement and the original document has not been produced deliberately and even in criminal proceedings relating to this very document, the document was alleged to have not been submitted by the police along with the criminal case papers and, therefore, a petition under Section 482 Cr.P.C. was submitted before this Court which is S.B. Cr.Misc. Petition No.287/2002 and because of the efforts made by this Court, the original document has been submitted by the police along with FR. After taking note of the facts in above Cr. Misc. Petition No.287/2002, this Court directed the petitioner to move appropriate application in that regard before the trial Court and this Court further

observed that if such application is made, the same shall be decided by the Court in accordance with law and the misc. Petition was disposed of.

According to learned counsel for the petitioner, since the document in question has been set up by the plaintiff/respondent no.2 and has been produced in the criminal case and has not been produced by the petitioner before the police, therefore, the plaintiff can get the original document released from the Court and may produce the original documents.

The above argument of the learned counsel for petitioner was in addition to challenge to the order dated 21.5.2004 whereby the petitioner's objection about admitting the document in evidence was rejected by the trial court.

Learned counsel for respondent/plaintiff submitted that in view of the change in circumstances, this Court may direct for production of the original document and the plaintiff will produce the document in view of the order passed by this Court on 20.7.2004 in S.B. Criminal Misc. Petition No.287/2002.

Learned counsel for respondent/plaintiff also relied upon a judgment of Karnataka High Court delivered in the case of Sri K. Anjaneya Setty vs. Sri K.H. Rangiah Setty reported in AIR 2002 Karnataka 287

wherein after relying upon the judgment of Apex Court delivered in the case of Bipin Shantilal Panchal vs. State of Gujarat reported in AIR 2001 SC 1158, the Karnataka High Court held that when an objection is raised for marking of a document, the Court should record the objection and thereafter permit the document to be marked subject to objection and thereafter the other party may be allowed cross examination on the document and objection about admissibility can be decided afterwards by the Court.

According to learned counsel for respondent/plaintiff, in view of the above, there is no illegality in the order dated 21.5.2005.

I have considered the rival submissions.

It may be worthwhile to mention here that all said above is about only procedure to be adopted by the Civil Courts. The consequence of this may result into irreversible situation and may put both the parties in more disadvantageous position if the decision is not taken in time by the Court. In C.P.C. by amendment, the evidence by affidavit has been permitted, recording of cross examination by Commissioner has been made permissible and this procedure is being readily followed by the trial courts, therefore, the objections regarding admissibility of the document are decided by the Court when the Court receives the

record from the Commissioner as provided in Sub-Rule 4 of Rule 4 of Order 18 C.P.C. The above procedure has been prescribed so that mere by raising objection, the proceedings may not be put to halt.

At the same time, the procedure is provided under Rules 3 to 11 of Order 13 C.P.C. wherein it has been provided that the Court may at any stage of trial of the suit can reject any document which, in turn, is irrelevant or inadmissible under Order 13 Rule 3 C.P.C. and in case, the document is admitted in evidence, the endorsement is required to be made as provided under Rule 4. How the copies of account books are dealt with, is provided in the subsequent Rules.

The irreversible situation will be when the Court will mark the exhibit and permit the cross examination of the document which is per-se inadmissible in evidence on the ground that the document is not original one and is a copy of the original, then the party producing the document will be deprived from making request for taking on record the original document or from summoning the document from the possession of any other person. The party producing will be deprived from opportunity of correcting his mistake which he would have corrected by producing original document if the objection about admissibility of the document would have been decided by the Court at proper time. There are many other situations which I need not to illustrate but the fact is that even law

permits that the objection about admissibility of the document can be decided at the time of decision of the suit, still it is not the law that all the objections about admissible document shall necessarily be decided at the time of final decision of the suit in cases where the evidence is taken by the Court itself and not through the commissioner.

It appears from the present case that the Court has not rejected the petitioner's objection on the ground that the document sought to be exhibited is a document for which the Court has granted permission to admit the document as secondary evidence, therefore, in such a situation where even the plaintiff himself is saying that the original document is in existence than how the copy of the document could have been admitted in evidence ? In case, the Court, in the final judgment of the suit, will held the document inadmissible in evidence than the plaintiff will miss the opportunity to produce or summon the original document.

When the document sought to be produced is without elaborate arguments, found to be not admissible evidence, there appears to be no reason for the Court to defer the decision on such petty matters and permit the parties to believe that their steps are in right directions and by that, the Court only will deny the opportunity to the party producing the document to

take steps in time and this may result into a wrong decision on the merit of the suit and may result into delay in finality of the dispute between the parties and will result into multiplicity of the proceedings because of which the appeals will be preferred and there will be necessity of paying huge court fees and thereafter getting only order of remand. However, it is made clear that deferment of decision on admissibility of document in evidence may not be illegality in every case and it depends upon facts of each case.

Since the trial court has not decided whether the document in question has been admitted in evidence as secondary evidence and it may result into mere multiplicity of proceedings in view of the fact that the original document is in existence is an admitted case and there appears to be no application for seeking permission to admit the document as secondary evidence, therefore, the order passed by the trial court dated 21.5.2004 has been passed without proper consideration of the nature of the dispute. To avoid multiplicity of the proceedings and when the plaintiff is ready to obtain the document from the file of the criminal case and ready to produce the document, then that opportunity is required to be given to the plaintiff and in case, again it is found that the original document cannot be obtained by the plaintiff, then he may be permitted to submit application under

Section 65 of the Evidence Act and that application can be decided by the trial court before proceeding in the suit to avoid any injustice to any of the parties.

It will be worthwhile to mention here that the objection of the petitioner for production of original document cannot be said to be of without any reason, in view of the allegations of the document being fabricated and forged, the importance of original cannot be ignored and this aspect has not been taken note of by the trial court.

In view of the above, this writ petition is allowed, the order dated 21.5.2004 is set aside and the plaintiff may obtain the original document from the file of the criminal case and may submit the same before the trial court and the plaintiff may even submit the application before the trial court for summoning the record of the criminal case so that the original document may come on record and in case, the original document will not come on record, the plaintiff will be free to take steps.

(PRAKASH TATIA), J.

S.Phophaliya